

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nina Mickens (T4)	Team: Team # 4	CCRB Case #: 201409799	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/22/2014 5:30 PM	Location of Incident: Broadway and Wall Street	Precinct: 01	18 Mo. SOL 3/22/2016	EO SOL 3/22/2016	
Date/Time CV Reported Tue, 09/23/2014 9:59 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 09/23/2014 9:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Brendan Kelly	00000	919234	TB MANH
2. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.LT Brendan Kelly	Force: Lt. Brendan Kelly used pepper spray against § 87(2)(b) and individuals.	
B. Officers	Force: Officers used pepper spray against § 87(2)(b) and individuals.	

## **Case Summary**

This case was placed on the sensitive case list on September 24, 2014 and assigned to Inv. Andrew Guinan. Upon his departure from the agency, the case was reassigned to Supervisor Nina Mickens for closure on December 17, 2014.

On September 22, 2014, at approximately 5:30 p.m., during the Flood Wall Street Protest, Lt. Brendan Kelly and other officers used pepper spray against § 87(2)(b) and other unidentified individuals at Broadway and Wall Street in Manhattan (**Allegations A and B**). There were several arrests at the location of individuals but § 87(2)(b) and § 87(2)(b) were not arrested or summonsed as a result of the incident.

Video footage was available throughout news sites and § 87(2)(b). Fieldwork was also conducted to obtain additional footage from the nearby banks and businesses (encl. 7A-B). YouTube video titled “§ 87(2)(b)” showed § 87(2)(b) and other protestors behind a barricade just before pepper spray was deployed by Lt. Kelly (encl. 8A-C). The video does not show the interaction with police or protestors before the pepper spray was deployed. In footage obtained by TARU, officers arrest various protestors staging a sit-in in the street, blocking vehicular traffic (9A-B). They are warned that if they did not move voluntarily, they would be arrested.

TARU footage also shows officers hitting the hands of some of the protestors with their hands and batons to get them off of the barriers. Several arrests are captured in the footage and there are no instances of excessive force.

## **Mediation, Civil and Criminal Histories**

The case was ineligible for mediation due to the arrests in connection with the incident. § 87(2)(g)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 4B-C).
- Lt. Kelly has been a member of service for 17 years and has no substantiated allegations against him (encl. 4A).

## **NYPD Documents**

The unusual occurrence report (UF-49) prepared for the incident indicates that there was a total of 100 arrests and nine summonses issued during the Flood Wall Street protests (encl. 14A-B). In the area of Wall Street and Broadway, protestors attempted to gain access in to the frozen zone. The protestors pushed the barriers and were unsuccessful. There were no serious injuries to protestors as a result. Two sergeants were indicated to have used their OC spray (Lt. Kelly was not mentioned in the UF49 as having used pepper spray).

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(b) was able to obtain Lt. Kelly’s name by reading his badge and Lt. Kelly, identified via video footage, acknowledged his role in the incident. The officers that used pepper spray on § 87(2)(b) and others were not identified.

**Recommendations**

**Allegation A- Lt. Brendan Kelly used pepper spray against § 87(2)(b) Donavan and other unidentified individuals.**

**Allegations B- Officers used pepper spray against § 87(2)(b) and unidentified individuals.**

It is undisputed that Lt. Kelly and officers used pepper spray against § 87(2)(b) and individuals during the Flood Wall Street protests.

§ 87(2)(b) and § 87(2)(b) stated that they were among the group of protestors whom were trying to move forward to get through Wall Street. However, they were met by officers who told them to get back. Protestors would yell for the group to push and grab the police barricades. § 87(2)(b) recalled Lt. Kelly instructing protestors to get back and acknowledged that the group was not compliant. § 87(2)(b) admits that the group's intention was to move the barricades. Though some did, § 87(2)(b) and § 87(2)(b) deny ever touching the barriers. Lt. Kelly stated that he used the pepper spray because he feared for his safety and that of other officers and because the protestors were not complying with orders. Lt. Kelly was injured after barricades fell on his hand (encl. 13A-13F). The officers that used pepper spray on § 87(2)(b) and others were not identified.

Pepper spray may be used when a member of service reasonable believes it is necessary to protect himself or another from unlawful use of force (encl. 3A-D). NYPD Patrol Guide 212-95

§ 87(2)(g)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Team: \_\_\_\_\_

Investigator: _____	_____	_____
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date